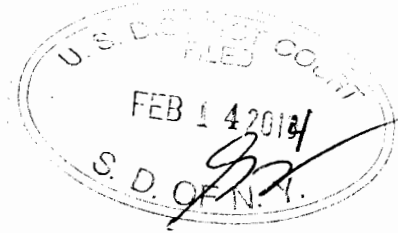


ORIGINAL

Approved: *Smyski*ANDREW DeFILIPPIS/TIMOTHY SINI  
Assistant United States AttorneysBefore: HONORABLE ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York**14 MAG 0292**

UNITED STATES OF AMERICA

- v. -

ALBERTO NIEVES,

Defendant.

COMPLAINTViolation of  
18 U.S.C. § 876(c)COUNTY OF OFFENSE:  
BRONX

SOUTHERN DISTRICT OF NEW YORK, ss.:

GUY McCORMICK, being duly sworn, deposes and says that he is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, and charges as follows:

COUNT ONE

1. From at least in or about July 2013 until at least in or about August 2013, in the Southern District of New York and elsewhere, ALBERTO NIEVES, the defendant, knowingly and willfully did deposit in an authorized depository for mail to be sent and delivered by the Postal Service a communication containing a threat to kidnap or to injure a person, to wit, NIEVES sent a letter dated July 1, 2013 to a person at the New York City Police Department containing a threat to injure such person.

(Title 18, United States Code, Section 876(c).)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

2. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and I have been involved in the investigation of the above-described offense. I am familiar with the facts and circumstances set forth below from my

personal participation in the investigation, including, among other things, my review of pertinent documents, and my communications with law enforcement officers. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

3. From my review of criminal history records pertaining to ALBERTO NIEVES, the defendant, I learned that on April 3, 2007, NIEVES was convicted in the United States District Court for the Southern District of New York of possessing a firearm after having been convicted of a felony, in violation of Title 18, United States Code, Section 922(g)(1). NIEVES was sentenced principally to 120 months of incarceration and is currently serving his sentence at the Otisville Correctional Facility in Otisville, New York (the "Otisville Facility").

4. In or about January 2014, an Officer ("Officer-1") of the New York City Police Department ("NYPD") provided federal law enforcement authorities with a handwritten letter, dated July 1, 2013 (the "July 1 Letter"), that Officer-1 received in or about July 2013 via the United States Postal Service. Officer-1 also provided the envelope in which the July 1 Letter was sent. From my review of the July 1 letter and the accompanying envelope, I learned the following:

a. The July 1 Letter is addressed to Officer-1 and signed by "Bert," a name Officer-1 knows to be used by ALBERTO NIEVES, the defendant.

b. The envelope in which the letter was sent is addressed to Officer-1 at the mailing address of an NYPD precinct located in the Bronx, New York. The sender listed on the envelope is NIEVES, and the return address is NIEVES's address at the Otisville Facility.

c. The envelope bears seven postage stamps, a Certified Mail label, and an ink stamp indicating that it was mailed on or about July 22, 2013.

d. The letter states, in part:

- i. "What's up Pig? You wanna run around my hood lying, and telling people that Poopie<sup>1</sup> is snitching, huh? Are you sure that's how you want to play? Now your Fucking with my Family, and your putting their lives in danger, especially my mother, sister, brother, nephew, grandfather, and my daughter."
- ii. "I'm gonna Tell you this straight the Fuck up, God Forbid anything happens to any of my Family members, because of the lies your trying to spread, its gonna cost me my life, but I'm gonna make sure you pay heavily. You should already know that I don't give a Fuck about you being a cop. (You're the typical coward pig who hides behind a badge and a puny vest. Yes puny."
- iii. "You ain't put me in prison, homo-cide. [Another NYPD officer ("Officer-2")] did. Plus, he had to lie, [another NYPD officer ("Officer-3")] had to lie, they had to break the same laws they swore to uphold, and he knowingly used lying rats to put me in prison."
- iv. "You, along with the A.T.F. are doing the same shit to Poopie that yous both did to me, lies, lies, and more lies."
- v. "Your Beef with me, leave it with me, and leave my Family out of it. See you soon."
- vi. "Remember you and your corrupt army created this monster."

5. I have spoken with a Criminal Investigator from the United States Attorney's Office for the Southern District of New York ("Investigator-1") who communicated with Officer-1, Officer-2, and Officer-3 regarding the aforementioned letter. Investigator-1 told me, among other things, the following:

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<sup>1</sup> "Poopie" is the street name of Jose Nieves, the brother of ALBERTO NIEVES, the defendant. Jose Nieves was arrested in December 2012 for, among other crimes, murder, in violation of Title 21, United States Code, Section 848(e). He is being prosecuted in the Southern District of New York by the United States Attorney's Office in this District.

a. All three officers stated that they are familiar with and previously interacted with ALBERTO NIEVES, the defendant, in connection with their work as NYPD officers prior to NIEVES' incarceration at the Otisville Facility.

b. Officer-1 stated that sometime in or around 2013, a known associate of NIEVES ("Individual-1") was arrested by the NYPD. Following his arrest, Individual-1 stated to Officer-1, in substance and in part, that Individual-1 could not wait until the day when NIEVES got out of jail because NIEVES was going to "get" Officer-1.

6. Investigator-1 also provided me with two letters, dated June 8, 2006 and April 10, 2007, that were previously sent to Officer-2 by ALBERTO NIEVES, the defendant, via the United States Postal Service. Based on my review of the letters, I learned the following:

a. The letter dated April 10, 2007 states, in part and among other things:

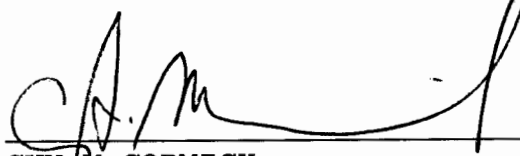
- i. "What's up? I thought I was gonna see you at trial but there was a change of plans. In case you ain't hear I copped out to only 10 yrs for them five guns. To bad you ain't find them all. I told you ain't no cheese eater over here. I'll put the H on my chest and will handle it."
- ii. "I am a real ride or die nigga. Death before dishonor."
- iii. "I just want to say thank you for the vacation. I really needed some time off from work. This time off from work is making me bigger, badder, colder, stronger, and smarter. So thanks."
- iv. "Before I let you go, ain't it a coincidence that I've been in jail for two years. And that in the past two years the crime rate has risen in many different categories in the Burke Ave area. There's something for you to think about."
- v. "See you soon fool. Tell all my favorite pigs I said, what's up? And coffee and donuts on me when I get out. Ha."

b. The April 10, 2007 letter contains several enclosures, including among others:

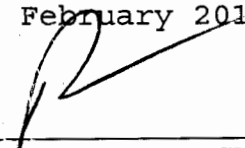
- i. A photocopied image depicting an unmarked police car with accompanying text that states, among other things, "Spot Unmarked Cop Cars," and "Detect the scent of a pork product? We do!"
- ii. Two photocopied images depicting (1) a prison inmate, and (2) a man holding a machine gun in the shooting position. The text accompanying the images reads "A Snitch Dies a Thousand Deaths / A Solder Dies Just Once" and "Gangsters."

7. From my review of the defendant's criminal history and of records pertaining to the defendant's incarceration at the Otisville Facility, I learned that the defendant is scheduled to be released to a halfway house sometime between January of 2014 and June of 2014.

WHEREFORE, the deponent respectfully requests that a warrant be issued for the arrest of ALBERTO NIEVES, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

  
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GUY MCCORMICK  
Special Agent  
Bureau of Alcohol, Tobacco, Firearms,  
and Explosives

Sworn to before me this  
14th day of February 2014

  
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HONORABLE ANDREW J. PECK  
United States Magistrate Judge  
Southern District of New York